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REGIONAL HEARING CLERK
EPA REGION VI

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August 30, 2017

Regional Hearing Clerk (6RC-D)
U. S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Re: Request for Hearing
Regarding Proposed Administrative Order for
Well Nos. 9 (OS0922); 4W (OS0924); 18W (OS6320)
Docket No. SDWA-06-2017-1110

To the Regional Clerk:

This firm represents Jireh Resources, LLC ("Jireh") regarding the referenced matter. We acknowledge receipt of correspondence from the Director of the Compliance Assurance and Enforcement Division dated August 4, 2017, enclosing a copy of the proposed order identified above. Please accept this letter as the formal request of Jireh for a hearing to contest the issuance of the proposed order and for an opportunity to present evidence in support of its position against the proposed order.

Regarding the setting of the hearing, Jireh representatives met with EPA personnel in Dallas earlier this month and discussed the matter at some length. At that meeting, EPA presented certain data and information in support of its position that Jireh had violated regulations contained in the notice and proposed order. Jireh made clear its intention to request a hearing in the matter. The parties agreed to schedule additional meetings and exchange further information to attempt to resolve the matter and avoid the need for a contested hearing. The parties also discussed that Jireh, in its hearing request, should ask that the hearing be deferred to give the parties the opportunity to schedule and hold these additional meetings. To that end, Jireh requests that the hearing on this matter be deferred for an appropriate length of time to allow further investigation and discussion.

Regional Hearing Clerk (6RC-D)
U. S. EPA, Region 6
August 30, 2017
Page 2

If you need anything further in this regard, please feel free to contact the undersigned. Meanwhile, we will continue communicating with Ms. Ellen Chang-Vaughan about our discussions and fact-finding. We look forward to achieving a satisfactory solution in the referenced matter.

Very truly yours,

PRAY WALKER, P.C.



John L. Randolph Jr.

cc: Cheryl T. Seager
Ellen Chang-Vaughan
Bureau of Indian Affairs, Minerals Branch
Osage Nation Environmental and Natural Resources Department
David House
Lanny Woods
Robert J. Winter

**McNAMARA, INBODY &
PARRISH, PLLC**
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August 31, 2017

Via Federal Express

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas Texas 75202-2733

RE: In the Matter of: Warren American Oil Company, LLC,
Docket No. SDWA-06-2017-1111

Dear Sir/Madam:

Enclosed is an original and two copies of Respondent's Answer to Proposed Administrative Order and Request for Hearing to be filed with the Agency. I would ask that you return a file-stamped copy to our office in the self-addressed, Federal Express envelope for your convenience.

Sincerely,

MCNAMARA, INBODY & PARRISH, PLLC



Stephen R. McNamara

SRM:ck

Enclosures

cc: CMRRR: 9314 7699 0430 0038 2267 52
Ms. Ellen Chang-Vaughan (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733 (w/encl.)
and via e-mail: Chang-Vaughan.Ellen@epa.gov (w/encl.)

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, REGION 6
DALLAS, TEXAS

FILED
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REGIONAL HEARING CLERK
EPA REGION VI

In the matter of:

Warren American Oil Company, LLC

RESPONDENT

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§
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§

Docket No. SDWA-06-2017-1111

RESPONDENT'S ANSWER TO
PROPOSED ADMINISTRATIVE ORDER
AND REQUEST FOR HEARING

**RESPONDENT'S ANSWER TO PROPOSED ADMINISTRATIVE ORDER AND
REQUEST FOR HEARING**

COMES NOW, Warren American Oil Company, LLC ("Respondent"), through its undersigned counsel, and files Answer to Proposed Administrative Order and Request for Hearing in the above-captioned matter.

STATEMENT OF LEGAL AUTHORITY AND JURISDICTION

1. Respondent was served with Proposed Administrative Order ("Proposed Order") in the above-captioned matter dated August 4, 2017, by Complainant, U.S. Environmental Protection Agency ("EPA") Region 6 ("Complainant"). EPA alleges that Respondent is in violation of the Safe Drinking Water Act (SWDA), for allegedly violating 40 CFR § 2912(c), failure to confine injected fluids to the authorized injection zone for Well No. 7B and 8B, and violation of 40 CFR § 2920(d) for Well Number 9B.

2. Respondent hereby files this Answer to the Proposed Order and Request for Hearing ("Answer") to contest material facts alleged and the appropriateness of the Proposed Order.

3. Respondent hereby requests time to conduct independent discovery and investigation regarding the EPA's allegations.

4. Respondent further requests that it be furnished with all data and information the EPA utilized or reviewed in making its determination leading to the issuance of the Proposed Order.

5. This Answer and Request for Hearing is timely filed.

6. Accordingly, Respondent has timely filed this pleading, has standing and has answered and requested a hearing under the applicable procedures, and has requested the ability to conduct discovery and investigation of the EPA's allegations.

RESPONSE TO SECTION I OF THE PROPOSED ADMINISTRATIVE ORDER

Section I of the Proposed Order is EPA's statement of its alleged statutory authority to bring the subject action, and thus requires no admission or denial from Respondent. To the extent that a response is necessary, Respondent denies that (i) it violated the Safe Drinking Water Act or violated regulations at 40 C.F.R. §§ 2912(c) and 2920(d) and (ii) denies that it should be required to shut-in and/or shut-down and disconnect injection pipelines from the wellhead for well Nos. 7B, 8B and 9B, as referenced in the Proposed Order.

RESPONSE TO SPECIFIC ALLEGATIONS

Respondent responds below to the remainder of EPA's allegations in the Proposed Order. Respondent's responses are organized according to the same paragraph numbers used by EPA in the Administrative Complaint.

1. Admitted.

2. Admitted.

3. Admitted.

4. Paragraph 4 is EPA's statement of law that requires no admission, denial, or explanation and in the alternative, is denied.

5. Paragraph 5 is EPA's statement of law that requires no admission, denial, or explanation and in the alternative, is denied.

6. Paragraph 6 is EPA's statement of law that requires no admission, denial, or explanation and in the alternative, is denied.

7. Paragraph 7 is EPA's statement of law that requires no admission, denial or explanation and in the alternative, is denied

8. Admitted.

9. Admitted.

10. Nothing alleged in Paragraph 10 in any way connects Respondent's wells or activities or disposed water with the North Bird Creek site which is approximately 0.75 miles distant from Respondent's closest disposal well. Because Paragraph 10, as drafted, makes no allegation with respect to Respondent, it does not require a response.

11. Respondent can neither confirm nor deny the allegations contained in Paragraph 11 because Respondent was not provided with duplicate water samples taken simultaneously with the EPA's samples. In addition, Respondent has been denied the opportunity to review the procedure of performing any chemical analysis of the samples which EPA relies upon. Further, a correlation to the chemical composition of water from the Mississippi Chat formation with water appearing in the North Bird Creek site is not evidence that Respondent's injected volumes of water have (or are) entering the creek or have (or are) causing the alleged contamination.

12. Respondent is without knowledge or information sufficient to form a belief as to the truth of the statements in Paragraph 12, and thus they are deemed denied.

13. Respondent is without knowledge or information sufficient to form a belief as to the truth of the statements in Paragraph 13, and thus they are deemed denied.

14. Respondent is without knowledge or information sufficient to form a belief as to the truth of the statements in Paragraph 14, and thus they are denied. Further, Respondent denies that the conclusion reached by the EPA in Paragraph 14, as to the Respondent, is supported by evidence that is accurate or reliable. Further, Respondent denies that the disposal of fluids into its B7, B8 and/or B9 wells could cause or contribute to a “pressure build-up” within the Mississippi Chat formation sufficient for fluid to migrate to the surface.

15. Respondent is without knowledge or information sufficient to form a belief as to in Paragraph 15, and denies that injected fluids from its wells are no longer confined in the authorized injection zone.

16. Denied.

17. Paragraph 17 is EPA’s Compliance Order that requires no admission, denial, or explanation, and in the alternative, is denied.

STATEMENT OF LEGAL DEFENSES

1. Respondent disputes that it has violated the Safe Drinking Water Act.
2. Respondent disputes that it has failed to confine injected fluids to authorized injection zones.
3. Respondent disputes that the B7, B8 or B9 wells were the source of the discharges or the pollutants that EPA allegedly observed.
4. Respondent asserts that the alleged discharges and alleged patterns of TDS and temperature readings that EPA allegedly observed, were caused by acts of third parties for which Respondent is not responsible, and/or other causes for which Respondent is not responsible.

5. Respondent reserves the right to assert other defenses to the Proposed Order and to supplement its answers as set forth herein in the future.

PRAYER FOR RELIEF

WHEREFORE, Respondent prays for the following relief:

- a. A hearing pursuant to Section 1423(c)(3)(A) of the Act, 42 U.S.C. § 300h-2(c)(3)(A), on the matters addressed in the Proposed Administrative Order and this Answer;
- b. The ability to conduct discovery and investigation regarding the EPA's allegations; and
- c. Such other relief as the Presiding Officer deems appropriate.

Respectfully Submitted,

MCNAMARA, INBODY & PARRISH, PLLC

By: 

Stephen R. McNamara, OBA #6071
Brian T. Inbody, OBA #17188
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Telephone: (918) 599-0300
Facsimile: (918) 599-0310
E-mail: smcnamara@mcnamlaw.com
Attorneys for Respondent

CERTIFICATE OF MAILING


I hereby certify that on this 31st day of August, 2017, RESPONDENT'S ANSWER TO PROPOSED ADMINISTRATIVE ORDER AND REQUEST FOR HEARING was sent to the following persons, in the manners specified.

Original and one copy *via* Federal Express:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas Texas 75202-2733

One copy *via* CMRRR and e-mail:

Ms. Ellen Chang-Vaughan (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
e-mail: Chang-Vaughan.Ellen@epa.gov



Stephen R. McNamara

L:\1063.38.Answer

**RHODES, HIERONYMUS, JONES, TUCKER & GABLE, P.L.L.C.
LAWYERS**

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Carlye O. Jimerson
Kerry R. Lewis ***
Randall E. Long
Lauren M. Marciano

William T. McKee
Chris L. Rhodes, III
Denelda L. Richardson
Michael P. Robertson ****
Colin H. Tucker
John H. Tucker

Of Counsel
Larry D. Henry
James D. Johnson

Hal Crouch (1902-1947)
Chris L. Rhodes (1902-1966)
E. D. Hieronymus (1908-1994)
George W. Gable (1918-2000)
Bert M. Jones (1932-2012)

— Est. 1931 —

*Also licensed in Kansas **
*Also licensed in Arkansas & Missouri ***
*Also licensed in Texas ****
*Also licensed in Missouri *****

RhodesHieronymus
O K L A H O M A

Reply to: **John H. Tucker**
jtucker@rhodesokla.com

September 1, 2017

The Regional Hearing Clerk
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Re: In the Matter of Novy Oil and Gas, Inc., Respondent; Docket No. SDWA-06-2017-1112

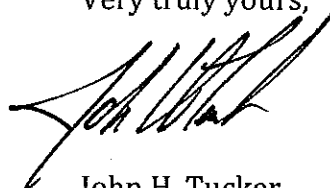
Dear Sir/Madam:

Attached please find Respondents Request for a Hearing to Contest Issuance of a Proposed Order in the captioned matter which Proposed Order was signed on August 4, 2017 and filed on August 7, 2017. Respondent is submitting a Freedom of Information Act request for copies of testing results, sampling and other data collected by the EPA which data formed the basis of the Proposed Order and which the EPA is unable to furnish directly.

Further, Respondent is currently engaged in discussions about resolution of the Proposed Order with counsel for the EPA. Respondent requests the hearing date be scheduled after the parties complete their negotiations. Respondent believes the EPA does not object to this request for delayed scheduling.

Thank you for your attention.

Very truly yours,



John H. Tucker

JHT/lak
Enclosure

To: The Regional Hearing Clerk
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

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REGIONAL HEARING CLERK
EPA REGION VI

Re: In the Matter of Novy Oil and Gas, Inc., Respondent; Docket No. SDWA-06-2017-1112

REQUEST FOR HEARING

Respondent Requests a Hearing to Contest Issuance of a Proposed Order in the captioned matter which Proposed Order was signed on August 4, 2017 and filed on August 7, 2017. Respondent is submitting a Freedom of Information Act request for copies of testing results, sampling and other data collected by the EPA which data formed the basis of the Proposed Order and which the EPA is unable to furnish directly. Further, Respondent is currently engaged in discussions about resolution of the Proposed Order with counsel for the EPA. Respondent requests the hearing date be scheduled after the parties complete their negotiations. Respondent believes the EPA does not object to this request for delayed scheduling.

SUMMARY RESPONSE TO PROPOSED ORDER

Respondent Novy Oil and Gas, Inc. ("Novy") denies any violation has occurred and objects to the entry of an order in the form proposed by the Compliance Assurance and Enforcement Division on August 4, 2017.

Summary of Response: The proposed order relates to a water disposal well alleged to operate in Osage County, Oklahoma, through which the EPA proposed order states, water is injected under pressure into the Mississippi Chat formation of rock. That is an incorrect statement. Novy has one authorized Class II well location in the area described by the proposed order, Osage B #15. However, while Osage B #15 is authorized to dispose of water into both the Mississippian and Arbuckle Formations. Osage B #15 was shut in on May 9, 2017, and has not been used for disposal of water since that date. That single well location has previously disposed of water produced from the Mississippi Chat formation into the Mississippian and Arbuckle formations. No pressure injection has ever been utilized. The Mississippian and Arbuckle formation discharge point creates a vacuum at the surface of the well site and water disposed of in the Novy Osage B #15 well bore was drawn by the vacuum directly into the Mississippian and Arbuckle formations.

RESPONSE TO SPECIFIC FINDINGS

2. The authorized Class II well, Osage B #15, is authorized to dispose of water into the Mississippian formation and the Arbuckle formation located in Osage County, Oklahoma.

9. The EPA has not furnished the analysis of the water samples taken by the EPA on October 5, 2016 and June 27 - 29, 2017 from the several locations throughout the tributary of North Bird Creek and the Novy Oil and Gas well #15 and is unable to comment on any correlation between the tributary samples and the fluids being disposed in the Novy Osage B #15 SWD well. Novy has a water analysis of a sample taken on November 9, 2016 from the Osage B Water tank that would be representative of the produced water that is disposed into the Osage B #15 SWD well. We would assume that the water produced from the Mississippian on the Osage B lease would be similar to the water associated with other Mississippian production from other leases in the general area. Identifying a specific correlation between the tributary samples and the fluids disposed of in the Osage B 15 well versus fluids injected into the six injection wells operated by others in the area is problematic. Novy has not been provided any data from the EPA concerning the EPA-reported elevated temperatures at the bottom of the water column of the tributary and North Bird Creek so we are unable to comment on any relation between the temperature of the stream water and the temperature of the produced water Novy disposed of into the Osage B #15 SWD until the EPA provides the data alleged. It is possible that other phenomenon related to the observed variation in Total Dissolved Solids could produce elevated temperatures in the water column.

10. The Osage B #15 SWD well was shut-in on May 9, 2017 and has not been utilized as a disposal well since that date. The date of the #15 shut-in predates the initiation of the May 25, 2017 in-stream fluid monitoring in the tributary and North Bird Creek.

11. THE EPA has not furnished copies of the data referred to in Paragraph 11, accordingly, Novy has not had the opportunity to review data in question and defers an opinion until the EPA provides the data alleged.

12. The Osage B #15 SWD well was shut-in on May 9, 2017 and has remained shut-in before, during and after the coordinated June 9 - 20, 2017 "static shut-in".

- (a) Novy has not received a copy of the static fluid level depth measured during the June 9 -20, 2017 "static shut-in" however the last static fluid level measurement of the Osage B #15 SWD well taken by Novy was 707.35 feet from surface on March 9, 2017. As stated, the static fluids cannot migrate from depth to the surface without additional pressure buildup. The Osage B #15 SWD was capable of disposing of 2,000 barrels of water per day in 440 760 feet of Mississippian and Arbuckle formation open hole at a depth of 2,470' to 3,230' on 26 inches of vacuum at the time of shut-in. This well has always disposed of fluid with negative pressure at the surface since it disposes into the Arbuckle formation as opposed to the Mississippi Chat formation exclusively.
- (b) Any correlation seen between injection operations and in-stream water quality TDS before and after the coordinated shut-in event cannot be

attributed to the operation of the Osage B #15 SWD well since the Osage B #15 SWD well was shut-in before, during and after the event.

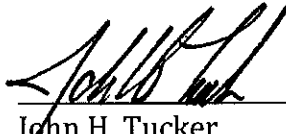
- (c) The Osage B #15 SWD was shut-in May 9, 2017; in-stream monitoring began May 25, 2017; coordinated shut-in occurred June 9 - 20, 2017. Any differences in amplitude of short term concentration fluctuations observed between the monitoring period prior to the coordinated shut-in and during the shut-in period could not be attributed to the Osage #15 SWD well since it was shut-in during the entire May 25, 2017 to June 20, 2017 monitoring period.

13. On May 4, 2017 a mechanical integrity test was requested on the Osage B #15 by Mr. Andrew Yates of the EPA. The well was checked and found to have a vacuum on the tubing casing annulus. Mr. Yates was informed. On May 9, 2017 disposal into the Osage B #15 SWD was voluntarily suspended and a pulling unit was moved in to repair the problem. A hole was found in the 4-1/2" tubing @ 323.36', the bottom of the 8th joint. The tubing was parted at the top of the 12th joint. Several attempts were made to fish and mill the tubing with minimal success. The top of the fish and fill are at 555'. Irreparable damage was done to the 7" casing, possibly from the fishing and milling operations, from a depth of approximately 450' to the point of the fill. The decision has been made to plug and abandon the Osage B #15 SWD well as opposed to trying to further attempt a repair since a repair has been determined to be cost prohibitive. We are confident that the Osage B #15 SWD well was not the source of contamination of the tributary and North Bird Creek. The capability of the Osage B #15 Arbuckle disposal well to take fluid on a strong vacuum since inception makes the notion that fluids could make their way from this wellbore to the surface physically impossible.

Dated: Sept 1, 2017

Respectfully submitted,

By:



John H. Tucker

jhtucker@rhodesokla.com

P.O. Box 21100

Tulsa, Oklahoma 74121-1100

(918) 582-1173

(918) 592-3390 Facsimile

Attorney for Respondent,

Novy Oil and Gas, Inc.

CERTIFICATE OF SERVICE

I, hereby certify that on this 1st day of September, 2017, I caused to be mailed a true and correct copy of the within and foregoing *Request for Hearing* to:

Sent by Fed-Ex: Regional Hearing Clerk (6RC-D)
U.S. EPA, Regional 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy by certified mail
Return receipt requested: Cheryl T. Seager, Director
Compliance Assurance and Enforcement Division
U.S. EPA, Regional 6
1445 Ross Avenue, Suite 1200
Mail Code: 6EN
Dallas, TX 75202-2733
Seager.cheryl@Epa.gov

Copy by email: Jann Hayman, Director
Osage Nation Environmental and Natural Resources
jannhayman@osagenation-nsn.gov

Robin Phillips, Superintendent
Osage BIA
robin.philips@bia.gov

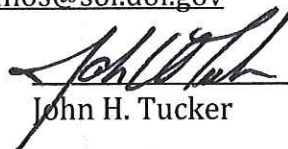
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Dated: September 1, 2017


John H. Tucker